

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF NEW JERSEY**

3                                   \_\_\_\_\_  
4                                   UNITED STATES OF AMERICA,

5                                   vs.

                                  CRIMINAL  
                                  NO. 19-cr-00699-NLH

6                                   LARRY L. MCGEE,

7                                   Defendant.

                                  Sentencing

8                                   \_\_\_\_\_  
9                                   Mitchell H. Cohen Building & U.S. Courthouse  
                                  4th & Cooper Streets  
                                  Camden, New Jersey 08101  
                                  Thursday, May 6, 2021  
10                                  Commencing at 2:05 p.m. via Zoom

11   **B E F O R E:**     **THE HONORABLE NOEL L. HILLMAN**  
12                                   **UNITED STATES DISTRICT JUDGE**

13   **A P P E A R A N C E S:**

14                                  OFFICE OF THE UNITED STATES ATTORNEY  
                                  BY: CATHERINE R. MURPHY, AUSA  
                                  970 Broad Street  
15                                  Newark, NJ 07102  
                                  For the United States

16                                  BROWNSTEIN & ASSOCIATES  
17                                  BY: HOWARD B. BROWNSTEIN, ESQUIRE  
                                  512 42nd Street  
18                                  Union City, NJ 07087  
                                  For the Defendant

19                                  U.S. PROBATION OFFICE  
20                                  BY: DANIEL CARNEY

21                                  LARRY L. MCGEE, DEFENDANT

22                                  Proceedings recorded by mechanical stenography; transcript  
23                                  produced by computer-aided transcription.

24                                  Robert T. Tate, Official Court Reporter  
                                  Bob@Tate-Tate.com  
25                                  (609) 462-4384

1 (On the record at 2:05 p.m.)  
2 (Whereupon the following is sealed by order of the  
3 Court.) ■  
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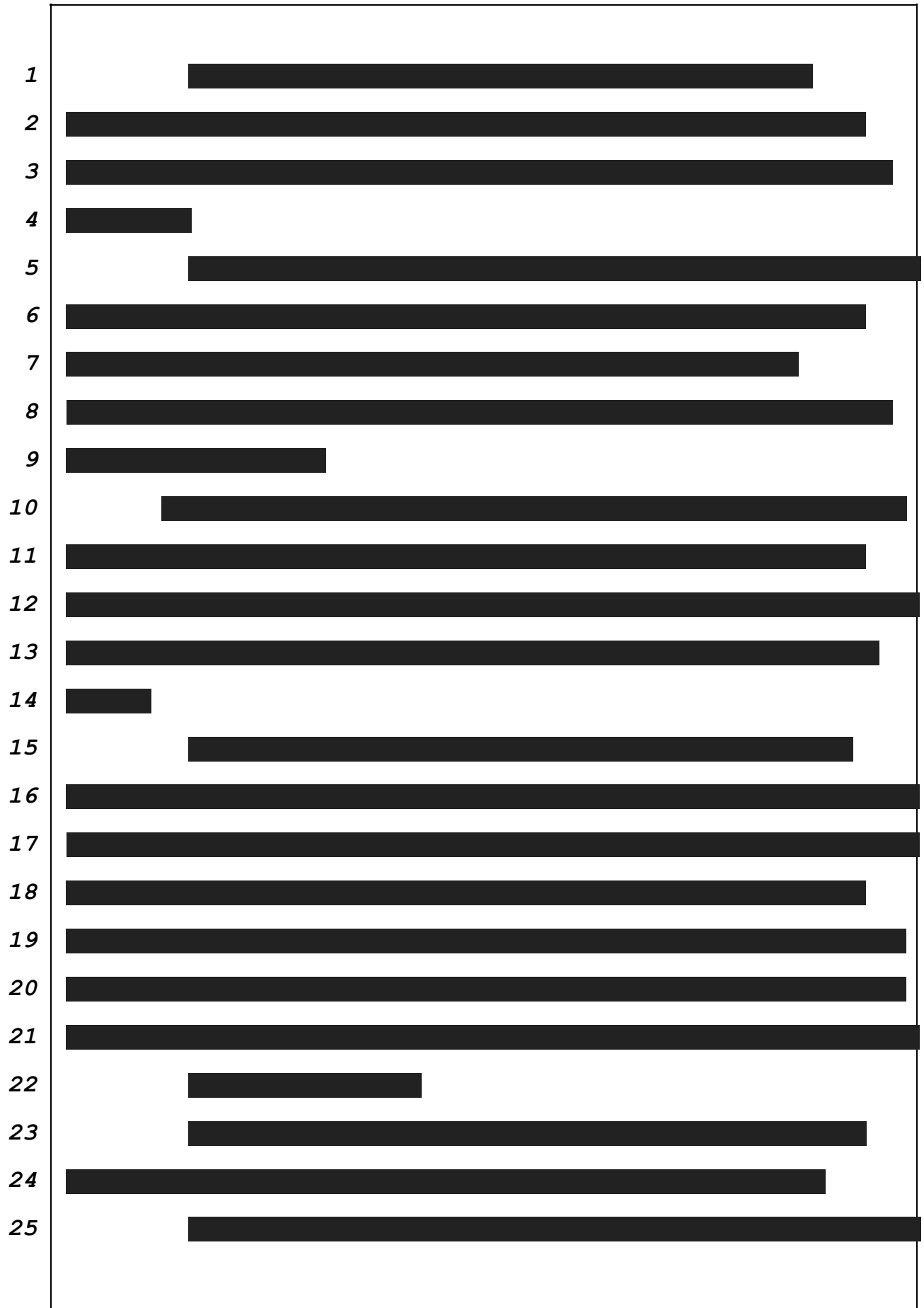


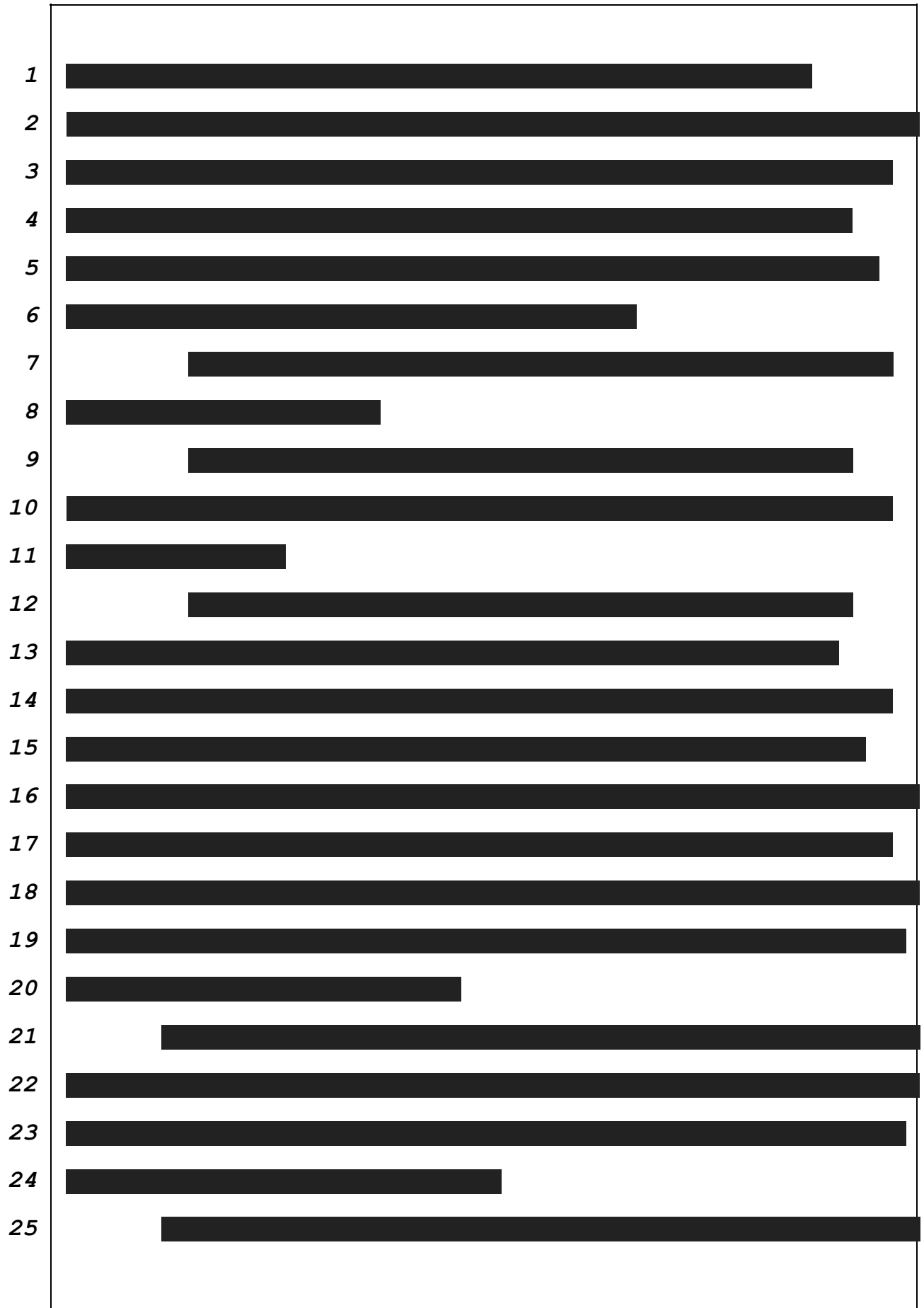
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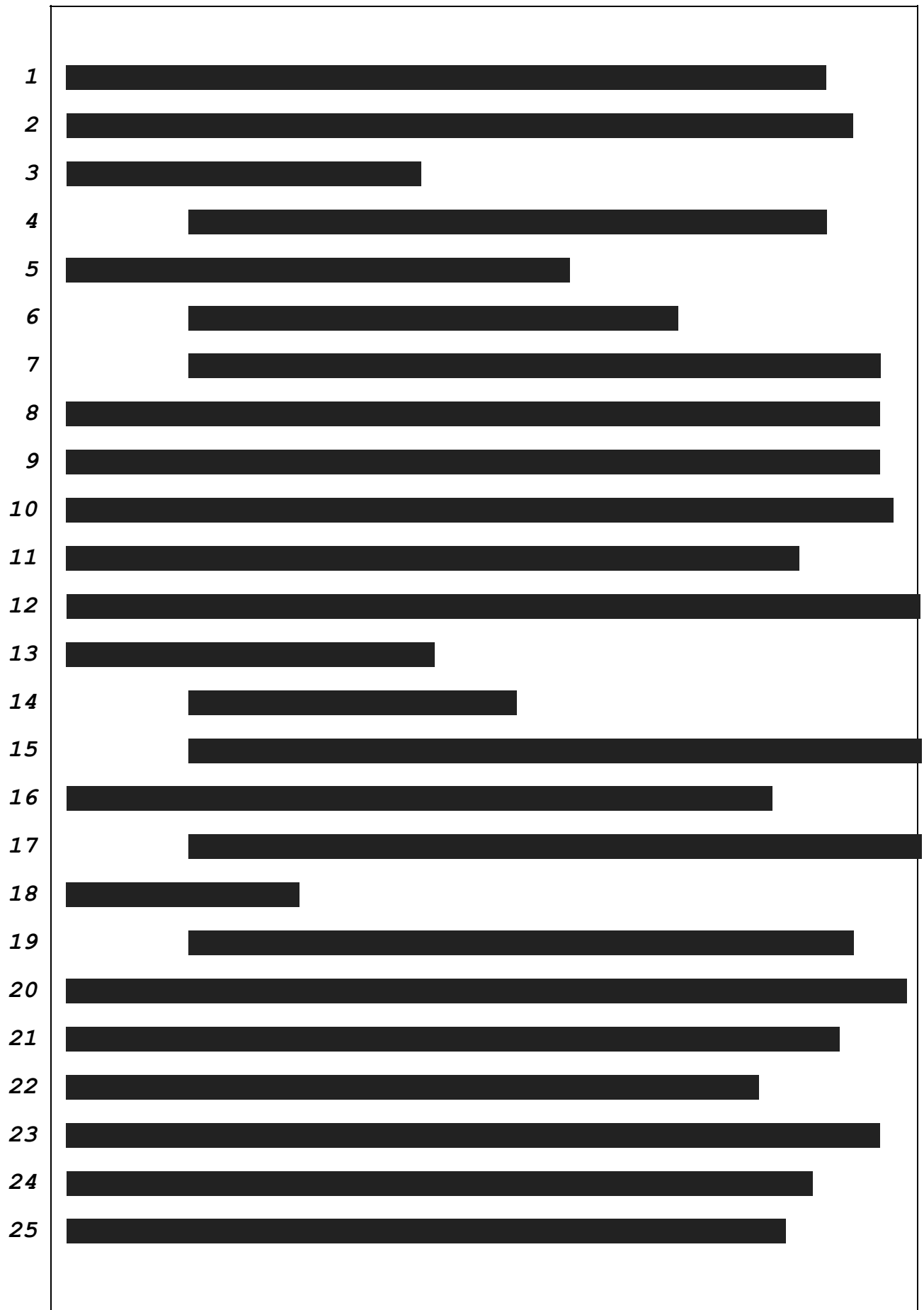
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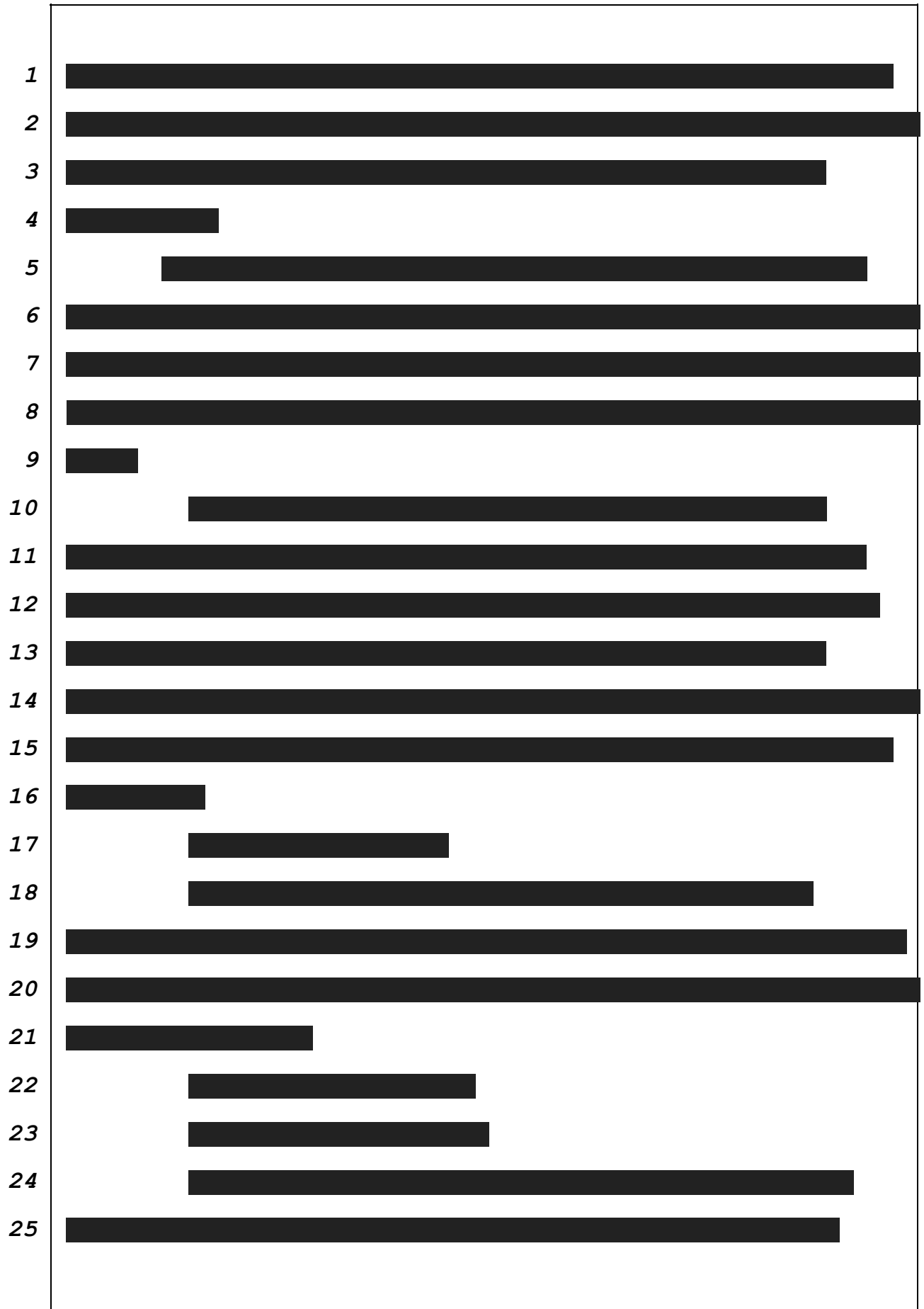


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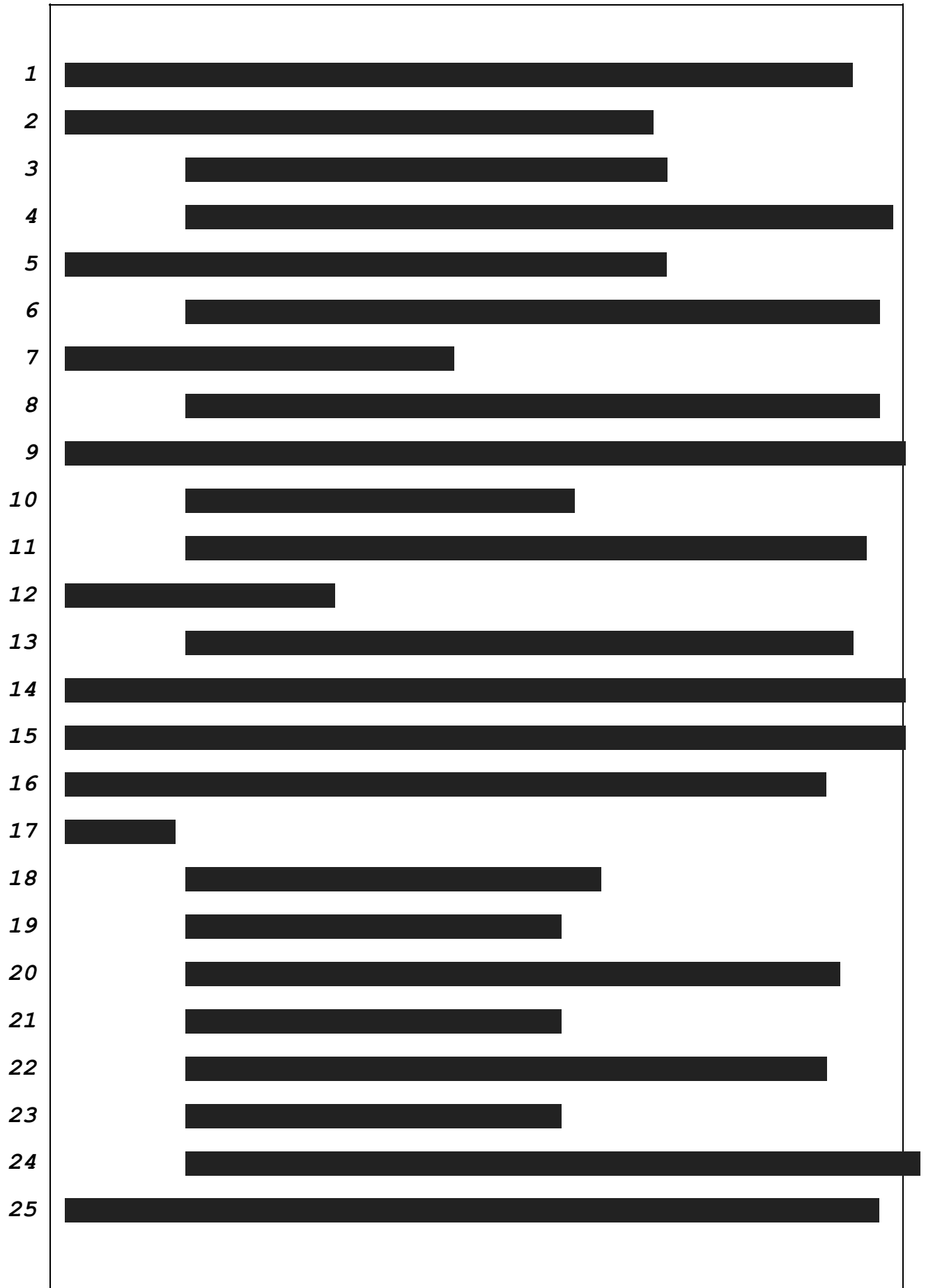


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25	(Whereupon the proceeding was unsealed by order of

1 the Court.)

2 THE COURT: For those signing on, please mute your  
3 microphones. Ms. Novoa, do you have the capacity to mute  
4 anyone who doesn't mute themselves?

5 THE COURTROOM DEPUTY: Yes, Judge. That's what I'm  
6 doing once they come in and I see that their audio is  
7 connecting, I automatically mute people.

8 THE COURT: All right. Very good. If you are  
9 signing on to these proceedings, kindly mute your microphone  
10 or the host will mute your microphone for you.

11 Well, someone is still signing on, but I think we are  
12 ready to proceed.

13 Mr. Tate, can you hear everybody so far?

14 THE REPORTER: I can, Judge. Thank you.

15 THE COURT: All right. This is the day set aside for  
16 sentencing, United States versus Larry McGee, Criminal Number  
17 19-699. May I have appearances, please, first for the United  
18 States?

19 MS. MURPHY: Good afternoon your Honor. Catherine  
20 Murphy, Assistant United States Attorney, on behalf of the  
21 government.

22 THE COURT: And for the defendant.

23 MR. BROWNSTEIN: Good afternoon, your Honor. Howard  
24 Brownstein on behalf of Larry McGee, who is presently on the  
25 screen.

1           THE COURT: All right. Mr. Brownstein, welcome to  
2 you as well.

3           MR. BROWNSTEIN: Thank you.

4           THE COURT: Mr. Brownstein, in a moment I'm going to  
5 ask your permission to swear your client so I can make inquiry  
6 regarding proceeding by video today. Let me note for the  
7 record that through the public website for the United States  
8 District Court for the District of New Jersey we received  
9 three requests to observe these proceedings and links were  
10 provided. We have a number beyond that three-person number,  
11 presumably because of the sharing of that link.

12           Let me state for the record and to be absolutely clear  
13 that if you are observing these proceedings -- rather, I'll  
14 say that Mr. Tate is the official court reporter for these  
15 proceedings and is the only person authorized to make any  
16 video or audio recording of these proceedings. This is  
17 longstanding Judicial Conference policy, the law of the United  
18 States, and the standing order of this Court. Any violation  
19 of this rule is subject to the contempt powers of the Court,  
20 including criminal contempt.

21           The next order of inquiry, Mr. Brownstein, may I make  
22 inquiry of your client regarding proceeding by video?

23           MR. BROWNSTEIN: Yes, your Honor.

24           THE COURT: All right. Ms. Novoa, could you please  
25 administer an oath?

1           Mr. McGee, good afternoon. Ms. Novoa will administer  
2 an oath.

3           THE DEFENDANT: How you doing?

4           THE COURTROOM DEPUTY: Sir, please raise your right  
5 hand.

6           Do you solemnly swear or affirm that all the testimony  
7 you are about to give in the case now before the Court will be  
8 the truth, the whole truth, and nothing but the truth, so help  
9 you God?

10          THE DEFENDANT: Yes.

11          THE COURTROOM DEPUTY: Please state your name and  
12 spell your last name for the record.

13          THE DEFENDANT: Larry McGee, M-C-G-E-E.

14          THE COURTROOM DEPUTY: Thank you.

15          THE COURT: Mr. McGee, could you either turn your mic  
16 up a little bit or maybe move closer to your computer so we  
17 can hear you a little better?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: All right. Thank you for that.

20          Good afternoon, sir.

21          THE DEFENDANT: How are you, sir?

22          THE COURT: All right. You're in a private  
23 residence?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: All right. And that private residence is

1 yours?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Are you comfortable there?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Anyone else present in the room?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. Have you had any drugs or  
8 medicine or pills or anything that affects your ability to  
9 make reasoned decisions?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you understand that today is the day  
12 set aside for your sentencing?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that sentencings are  
15 normally conducted in an open courthouse in an open courtroom?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So, if you wanted to have supporters  
18 there or any other interested members of the public might want  
19 to attend, they could do so. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: That if you wanted to consult with Mr.  
22 Brownstein during these proceedings at any time by being next  
23 to him in the courtroom, all you would have to do is lean  
24 over, whisper in his ear, or ask for an adjournment, correct?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right. Now, you may know that the  
2 courthouse has been closed for quite some time. I can't  
3 remember the last time you were before me, but I assume we  
4 proceeded during the pandemic, that would be my recollection.  
5 There's a previous order entered, Ms. Murphy. Do you recall  
6 that I made inquiry of you before about proceeding by video?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: All right. One of the ways we try to  
9 replicate an in-court proceeding, in addition to providing  
10 access to the public, is to provide you an opportunity to  
11 speak to Mr. Brownstein privately. If at any time during  
12 these proceedings you wish to do that, all you have to do is  
13 ask and we'll put you in a private breakout room for purposes  
14 of consultation with counsel. Do you understand that?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: All right. And Mr. Brownstein knows to  
17 ask for that as well if he determines that that's appropriate.

18          Now, the courthouse is open for criminal proceedings  
19 where defendants do not consent to video. In other words, we  
20 could hold a sentencing hearing in open court in light of a  
21 recent order entered by the Court if that were your choice.  
22 Whether proceeding in person or by video is entirely up to  
23 you. Do you understand that?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: And you've had an opportunity to speak to

1 Mr. Brownstein about that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And the consent that you previously  
4 granted for purposes of video continues through this  
5 proceeding?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Brownstein, you discussed  
8 the options with him?

9 MR. BROWNSTEIN: Yes, your Honor.

10 THE COURT: And do you believe proceeding by video is  
11 in his best interests?

12 MR. BROWNSTEIN: Absolutely, your Honor.

13 THE COURT: All right. Could I get a brief proffer  
14 from the United States about why the United States believes  
15 proceeding by video would be appropriate in this case?

16 MS. MURPHY: Certainly, your Honor. The United  
17 States has submitted a proposed COVID-19 order to your Honor  
18 which sets forth that proceeding today by video is in the  
19 interests of justice, first to ensure that the Court is not  
20 overwhelmed by cases and proceedings at the conclusion of this  
21 period of emergency, particularly in this district given that  
22 there are multiple judicial vacancies.

23 Proceeding by video today also permits Mr. McGee to  
24 obtain a speedy resolution of his case and to permit the  
25 victim of the offense the ability to obtain a speedy

1 determination of guilt responsibility for the harm caused by  
2 Mr. McGee.

3 Proceeding by video today is also in the interests of  
4 justice as it permits the government to obtain a resolution  
5 given that the government is operating in a restricted  
6 capacity in light of the pandemic.

7 Finally, the offenses charged in this case occurred  
8 between 2016 and 2019, and the government understands that Mr.  
9 McGee would like to move forward and resolve this case without  
10 undue delay.

11 THE COURT: All right. Mr. Brownstein, do you agree  
12 with those proffered reasons?

13 MR. BROWNSTEIN: Yes, your Honor.

14 THE COURT: All right. Mr. McGee, do you agree with  
15 those reasons?

16 THE DEFENDANT: Yes, sir. Yes, your Honor.

17 THE COURT: All right. I find that the requirements  
18 of the CARES Act and the standing orders of the Court have  
19 been satisfied in this matter, that Mr. McGee understands his  
20 options, and that he wishes to continue to consent to video  
21 proceeding and we will do so now.

22 All right. I like to begin by reviewing the written  
23 sentencing materials that have been submitted to the Court for  
24 consideration here at sentencing. I'd like to begin with Ms.  
25 Murphy, as well as confirm receipt of the presentence



1 investigation report and identify contested issues, and I  
2 believe that there are two.

3 First, Ms. Murphy, I received a comprehensive  
4 sentencing memorandum and addendum from you as well in support  
5 of an anticipated departure. Are there any other written  
6 sentencing materials from the United States?

7 MS. MURPHY: Nothing further.

8 THE COURT: All right. And I have a final written  
9 presentence report dated January 13th, 2021. Is that the  
10 report that you have?

11 MS. MURPHY: That is the report that the government  
12 has, your Honor.

13 THE COURT: All right. Now, there are I believe two  
14 issues where Probation differs from the parties' plea  
15 agreement, and I believe that they are found at paragraphs 51  
16 and 53, correct?

17 MR. BROWNSTEIN: Yes, your Honor.

18 THE COURT: Other than those two issues, which we  
19 will resolve at step one, Ms. Murphy, are there any other  
20 objections, corrections or additions to the report?

21 MS. MURPHY: The only correction the government would  
22 make is with respect to the final sentence of paragraph 17.  
23 The government respectfully requests that it be changed to  
24 reflect that the investigation eventually revealed that the  
25 identities of approximately 79 individuals were used as part

1 of this scheme and that a majority of these individuals were  
2 inmates.

3 THE COURT: Yes. And I remember that from the  
4 sentencing of a co-defendant, sentencing of co-defendants.  
5 Thank you for reminding me that. We fixed that in the  
6 statement of reasons rather than reissue the report.

7 Mr. Brownstein, any objection to that change?

8 MR. BROWNSTEIN: No, your Honor.

9 THE COURT: All right. Thank you, Ms. Murphy.

10 Mr. Brownstein, the same series of questions from you.  
11 I have a sentencing memorandum dated April 23rd, 2021,  
12 offering reasons for mitigation of sentence in support of the  
13 government's anticipated motion and accompanied by several  
14 letters written on Mr. McGee's behalf speaking to his good  
15 qualities, both personal and professional and in his  
16 community. I have read those letters and will take them into  
17 consideration here today.

18 I would like to know, Mr. Brownstein, are there any  
19 additional written materials from the defense?

20 MR. BROWNSTEIN: No, your Honor.

21 THE COURT: All right. And have you had an  
22 opportunity to review the January 13th, 2021 report with your  
23 client?

24 MR. BROWNSTEIN: Yes, your Honor.

25 THE COURT: Any corrections, additions or objections

1 other than the ones that will be joined at step one?

2 MR. BROWNSTEIN: No, sir.

3 THE COURT: All right. Let's turn then to step one  
4 of the sentencing process. Here the Court considers the  
5 advisory sentencing guidelines or calculates the advisory  
6 sentencing guidelines. They are indeed advisory, they're one  
7 factor among many that the Court will consider in determining  
8 its overall sentence after step three. We calculate them  
9 because they represent a benchmark or reference point for any  
10 departures or variances that the Court may grant on  
11 application of the parties or may calculate on its own motion.  
12 Such departures and variances are best imposed in conjunction  
13 with an accurate calculation of the guidelines to ensure  
14 uniformity in sentencing and to avoid unwarranted disparity.

15 So, if we turn to page 49 of the report, we will see  
16 that the 2018 guideline is used. Probation concludes a base  
17 offense level of 7. And then in paragraph 51, we encounter  
18 the first dispute that the parties appear to have with  
19 Probation's conclusions.

20 Probation concludes that the amount of loss in this  
21 case is more than \$1.5 million, although just barely, but not  
22 more than \$3.5 million, more specifically, \$1,506,420.76, and  
23 adds 16 levels. The parties had stipulated to a level -- an  
24 increase of 14 levels with a loss of more than \$500,000 but  
25 less than \$1.5 million.

1           The primary, although it's sprinkled throughout the  
2 presentence report, the primary basis for this conclusion is  
3 found, based on my review, in paragraphs 26, 27 and 28, and is  
4 based on, as set forth in the report, the probation officer  
5 author's review of the underlying information and  
6 investigative documents prepared by the Federal Bureau of  
7 Investigation. This is found at paragraph 14.

8           I know the United States would stand by its stipulation  
9 and its plea agreement and will probably not want to further  
10 address this issue. Mr. Brownstein, I'll hear you on it. I  
11 know you object to it, and I understand your arguments about  
12 the relative role of Mr. Arena and Mr. McGee, but this seems  
13 to be based on specific findings that the scheme extended for  
14 some period of time after Mr. Arena ceased activities and some  
15 additional loss was incurred, and that's why the loss to Mr.  
16 McGee is slightly higher. I don't have any reason to question  
17 that other than your objection to it, and the recitation that  
18 it relies on underlying FBI records would seem to be  
19 sufficient indicia of reliability. How can you prove to me  
20 that this number is wrong?

21           MR. BROWNSTEIN: Well, I'm not exactly sure how the  
22 number came -- they came about that number. Secondly, the  
23 Court did receive a forfeiture order where the amount is  
24 \$300,000, what Mr. McGee was involved in this incident, which  
25 is even a guideline level enhancement of 12, not even 14. So,

1 where they came up with this extra couple of dollars and how  
2 they got over the 15 hundred, and I see where, I think Mr.  
3 Arena was still involved, but is saying that Mr. McGee  
4 referred people, other individual, Mr. Paulino, which I think  
5 was someone who is also involved with Mr. Arena, and he went  
6 to a jewelry store in New Jersey, which Mr. McGee did not  
7 know, was not involved in, had never been to New Jersey, and  
8 never knew the owner of the jewelry store. So, how all this  
9 is enhanced and where the initial numbers come from, I can't  
10 say.

11 All I know is that I reviewed what Ms. Murphy sent me  
12 on the forfeiture. It was \$308,000. We're talking about a  
13 minor amount of money over the guideline level of 15  
14 hundred -- \$150,000, and I'd ask the Court to concur with the  
15 agreement between the government and the defense in the plea  
16 agreement.

17 THE COURT: Well, again, Ms. Murphy, I'll leave it to  
18 you whether you want to address any of this or not. My  
19 understanding from the last -- from the sentencing of a  
20 co-defendant is that the forfeiture numbers are based on gain,  
21 but the calculation of loss is based on loss, and that's the  
22 difference, why there's a difference.

23 In terms of the jewelry store and all of that, I can  
24 only rely on what I've read and what Probation has told me,  
25 which is that Mr. McGee is responsible for those additional

1 transactions as they relate to fraudulent identities and/or  
2 credit that Mr. McGee was involved in. He doesn't have to put  
3 the money in his pocket to be responsible for that loss as a  
4 matter of loss determinations under the guidelines.

5 If you want to adjourn the sentencing and take this up  
6 with Probation and ask them, you know, do a show me, do a show  
7 and tell, that's the way this really should be addressed. I  
8 can't rely on the forfeiture number to dispute this. I would  
9 have to see a calculation from you that disputes Probation's  
10 calculation. Otherwise, I would find by a preponderance of  
11 the evidence, as set forth in the presentence investigation  
12 report that has not been specifically challenged, only  
13 generally challenged, as accurate and complete. I'll leave it  
14 to you.

15 MR. BROWNSTEIN: Well, Judge, as I said, it's a minor  
16 difference between the level 16 and a level 14, which makes a  
17 big difference as far as a sentence is concerned. I don't  
18 have the documents in front of me nor did I have the documents  
19 for me to calculate what the actual loss was. I don't know  
20 the accuracy of the FBI information, I can't say. But for  
21 such a minor situation, I'm not going to ask for an  
22 adjournment to be able to go back and go through that, Judge.  
23 I'll just move forward, and if the Court feels an increase of  
24 16 levels, I think 14 as we agreed upon, Ms. Murphy knew what  
25 the numbers were when we came to the agreement, and I'd ask

1 for the Court to abide by our agreement.

2 THE COURT: All right. Well, I'll offer to Ms.  
3 Murphy the opportunity to represent to the Court that she sat  
4 down with you and the FBI and the FBI number for Mr. McGee was  
5 below 1.5. I just don't, I don't have any -- I have  
6 Probation's findings, which is based on an assertion by them  
7 that they met with the FBI, they reviewed the records, and  
8 they calculated this amount. I don't have anything to  
9 undermine that, and either I've got to hear it from the  
10 government or I'll hear it from you, and other than, Judge, we  
11 stipulated to a different number and the forfeiture number is  
12 different. I'll provide that opportunity to you.

13 I will take, if I accept this, I will still take into  
14 consideration at step three the argument you have just raised,  
15 which is valid, is that he goes from a 14 to a 16 and two  
16 points ain't nothing for \$6,000 and that just seems a little  
17 out of whack, and that can be taken into consideration in the  
18 overall sentence. I think that's fair. But I don't have any  
19 reason to doubt Probation's calculation. Unless I have more,  
20 I'm going to adopt it.

21 Ms. Murphy, do you wish to be heard on this issue?

22 MS. MURPHY: Your Honor, I can just represent that  
23 the government stands by the terms of its plea agreement. Mr.  
24 McGee pled guilty before the other defendants. It reflects  
25 the loss calculation at the time that he entered his plea, and

1 additional information was provided to Probation and that's  
2 the loss calculation you see here. I shared the basis for  
3 that loss calculation with Mr. Brownstein. But I stand by the  
4 terms of the parties' plea agreement, which is a loss amount  
5 of up to \$1.5 million and an offense level of 14.

6 THE COURT: But you are not prepared to prove that  
7 Probation is wrong?

8 MS. MURPHY: No, I don't believe the number is wrong.

9 THE COURT: All right. I'm going to accept  
10 Probation's calculation of the loss amount and compute the  
11 specific offense characteristic as a level 16 and turn to the  
12 next issue.

13 From there, two points are added because there was an  
14 unauthorized transfer or use of any means of identification  
15 unlawfully to produce or obtain another means of  
16 identification. And then we come to the next issue that's  
17 joined for the calculation of the guidelines, and that is  
18 whether the defendant knew or should have known that the  
19 victims of the offense were vulnerable.

20 I previously applied this in the Arena sentencing. I  
21 can't recall whether I applied it in the Modeliste one or not,  
22 but as we discussed very briefly in the modification of the  
23 presentence report, Mr. Arena, through his own devices,  
24 apparently, obtained the information of incarcerated  
25 individuals, and then using their identifiers engaged in



1 certain transactions and credit line modifications, adding in  
2 false vendors and so forth in order to boost the credit scores  
3 of those individuals, and then was going to use those lines of  
4 credit, as he did, as part of this scheme, and that Mr. McGee  
5 joined in the scheme knowing of its extent.

6 In light of the use of vulnerable victims, as I  
7 previously found, in order to further this conspiracy, this  
8 seems to be an appropriate adjustment. I recognize it was not  
9 contemplated by the plea agreement, but again, in light of the  
10 findings of the presentence report, it appears that it is an  
11 appropriate specific offense characteristic at step one.

12 Mr. Brownstein, is there anything you want to add to  
13 the record or argue to me to convince me that the vulnerable  
14 victim enhancement should not be applied to Mr. McGee?

15 MR. BROWNSTEIN: As I said, the vulnerable victim had  
16 no damage done to them based on the scheme that Mr. Arena  
17 created. The only one who had a damage done was the Synchrony  
18 Bank. There was no -- the individuals, inmates, whatever  
19 names you want to use, were not vulnerable -- were not in any  
20 way damaged by the scheme to defraud. They do not owe any  
21 money. The only one that is owing money to is Mr. McGee, Mr.  
22 Arena to the Synchrony Bank, and that's what the loss is  
23 about. So, I don't think the victim enhancement should apply  
24 here.

25 THE COURT: All right. Well, I'll hear from Ms.

1 Murphy if she wants to be heard on this. I'm not sure I'm  
2 convinced of that. Essentially what happened is the identity  
3 of these individuals were stolen and credit lines, which were  
4 not -- were inflated and not paid in full were obtained. This  
5 very likely would have a negative impact on the credit rating  
6 of the individuals whose identities were stolen, even if a  
7 decision not to pursue them for the loss was made. I'm not  
8 prepared to find that there was no actual loss or  
9 victimization of the individual whose identity was stolen.  
10 They may not be owed restitution, but they still had their  
11 identities stolen and lines of credit taken out in their name  
12 without their authorization. In fact, that's the very nature  
13 of the scheme here.

14 I consider, under the terms of relevant conduct, for  
15 them to have been victims of either a state, a local, state or  
16 federal crime based on that unauthorized use of their  
17 identities to obtain credit. Relevant conduct does not have  
18 to be charged. It only has to be fairly established. That  
19 the government only chose to charge Mr. Arena, Mr. McGee, Mr.  
20 Modeliste with bank fraud, in this case conspiracy to commit  
21 bank fraud and bank fraud, doesn't mean unauthorized access to  
22 credit accounts or identity theft was not part and parcel of  
23 the scheme. In fact, it seems to me to be a central part of  
24 the scheme. So, I would apply this enhancement.

25 Anything else on that, Mr. Brownstein?

1 MR. BROWNSTEIN: No, your Honor.

2 THE COURT: Ms. Murphy?

3 MS. MURPHY: Nothing further from the government.

4 THE COURT: All right. I'm going to add the two  
5 points and determine that the adjusted offense level is a  
6 level 27.

7 Probation concludes that Mr. McGee has accepted  
8 responsibility and did so in a timely manner. In fact, I'm  
9 told that he immediately cooperated with the United States in  
10 this case, and, therefore, I calculate the adjusted offense  
11 level as a level 24.

12 Mr. McGee's criminal history is calculated beginning at  
13 paragraph 61. One point is assessed for an 11-year-old, or  
14 so, 10-and-a-half-year-old matter in Illinois and that's the  
15 only point calculated. Because he has a one-point criminal  
16 history score, he's in criminal history category I. Those two  
17 things taken together, level 27 and -- rather, level 24 did I  
18 say? Level 24 and a criminal history category of I, means an  
19 advisory sentencing guideline range of 51 to 63 months.

20 Other than the issue about the amount of the loss and  
21 vulnerable victim, are there any other reasons -- any other  
22 objections to the report and may I otherwise adopt it in full,  
23 Ms. Murphy?

24 MS. MURPHY: No objections from the government.

25 THE COURT: Mr. Brownstein?

1 MR. BROWNSTEIN: Nothing further, your Honor.

2 THE COURT: All right. The parties' rights with  
3 regard to the two calculations that I have determined are  
4 preserved. I'll adopt the findings of the presentence report  
5 in support of those two specific offense characteristics.

6 We then turn to step two of the sentencing process.  
7 The Court has not provided any advance notice to the parties  
8 about its intention to depart on its own and, therefore, will  
9 not depart on my own. I understand from a submission made to  
10 the Court in camera that the United States has a departure  
11 motion. For the record, 5K1.1 allows the Court to consider  
12 the support, any support for a departure motion under 5K1.1 in  
13 camera.

14 I received a written submission from the United States  
15 as part of the sentencing process here with regard to a  
16 departure motion. I have also considered proffers from Mr.  
17 McGee and Mr. Brownstein in order to have a fuller picture of  
18 the basis for such a departure, and I invite Ms. Murphy to  
19 make any departure motions now that she wishes to make.

20 MS. MURPHY: Your Honor, the government moves for a  
21 departure based on 5K1.1 and as support the government refers  
22 to its April -- the addendum A to its April 29, 2021  
23 sentencing memorandum.

24 THE COURT: All right. Mr. Brownstein, this is a  
25 motion you do not oppose, indeed I take it that you join in

1 it?

2 MR. BROWNSTEIN: I do.

3 THE COURT: All right. And I appreciate both sides  
4 providing information so that I can fully complete -- fully  
5 consider this motion.

6 Under this motion, the Court has the authority to  
7 depart from the guidelines if the Court concludes, after  
8 review of five statutory factors, that the defendant has  
9 provided substantial assistance in the investigation or  
10 prosecution of another person who has committed an offense. I  
11 am told of three separate matters that Mr. McGee has provided  
12 assistance on. One is the matter pending, that was pending in  
13 this Court or is pending in this Court. Mr. Arena and Mr.  
14 Modeliste have both pled guilty and have been sentenced, and  
15 that's a partial basis for the departure motion that has been  
16 made before me.

17 In a related case, Mr. McGee provided assistance  
18 regarding Mr. Arena for which he has pled guilty in a state  
19 matter in State Court in New York.

20 I have also received information from the United States  
21 concerning a matter in another federal district and have taken  
22 that into consideration as part of my overall determination as  
23 to an appropriate departure.

24 My review of the in camera submissions on those three  
25 matters demonstrates to my satisfaction that in those three

1 matters, that Mr. McGee has provided useful and significant  
2 information, and that the government concurs in that  
3 evaluation of the assistance rendered; indeed, in the present  
4 matter before me two significant convictions were obtained  
5 against co-defendants. Mr. McGee's explanation of the scheme  
6 and the involvement of others was no doubt a factor in those  
7 guilty pleas and he's to be entitled to a departure for that  
8 alone.

9           Significantly, he assisted another prosecution entity,  
10 another sovereign in another matter related to Mr. Arena and  
11 as has been relayed to me, the investigators in that matter  
12 were quite satisfied with the information provided and indeed  
13 indicated that it saved them years of work.

14           The other matter has also been a subject of  
15 cooperation, and I have received information from the  
16 government in camera that indicates that this additional  
17 cooperation has been considered by the government to be  
18 significant and useful.

19           The Court determines that, on the record before me,  
20 that the truthfulness, completeness and reliability of that  
21 information has been unquestioned by individuals who have  
22 relayed information to me. I have nothing from a government  
23 or reliable source indicating that Mr. McGee has been anything  
24 other than reliable, truthful and complete in his matters of  
25 cooperation with state and federal authorities.

1           The nature and the extent of the assistance appears to  
2 be extensive historically and providing background  
3 information, and this is, given the breadth across  
4 jurisdictions, the nature of these schemes and the importance  
5 of having an individual with insider knowledge makes such  
6 assistance substantial because of that insider status.

7           The fourth factor is whether the defendant suffered or  
8 there's any danger or risk to the defendant or his family  
9 resulting from his assistance. There's always a risk of such  
10 risks anytime anyone does cooperate. My overall assessment of  
11 this, based on the in camera submissions, is that Mr. McGee  
12 suffers a higher, higher than ordinary risk of such danger,  
13 and I'm taking that into consideration in determining my  
14 overall sentence.

15           In terms of the timeliness of the defendant's  
16 assistance, I'm told from the government that Mr. McGee  
17 cooperated in a timely fashion in the matter before me, in the  
18 other state matter and in other federal matters, and has been  
19 unwavering in his ability and desire to provide such  
20 assistance.

21           So, I find on the record before me that Mr. McGee is  
22 entitled to a substantial departure from the guidelines  
23 calculated at step one. I previously calculated them at 51 to  
24 63 months. I will vary -- or depart, rather, down seven  
25 levels at step two to 24 to 30 months in light of the

1 cooperation and the government's motion.

2 Let me ask the United States whether they wish to  
3 address that motion any further?

4 MS. MURPHY: The United States does not wish to  
5 address the motion any further.

6 THE COURT: All right. Mr. Brownstein?

7 MR. BROWNSTEIN: No, it's guidelines discretionary  
8 and we will move forward from there, Judge.

9 THE COURT: All right. We then turn to step three of  
10 the sentencing process. Here I offer to Mr. Brownstein the  
11 opportunity to make any arguments in mitigation of sentence,  
12 to offer any additional evidence he wishes the Court to  
13 consider, and, Mr. McGee, I invite you to address the Court  
14 personally if there's anything you want me to know before I  
15 pronounce sentence, and Mr. Brownstein may take those up in  
16 the order he sees fit. Mr. Brownstein.

17 MR. BROWNSTEIN: I think Mr. McGee would like to  
18 address the Court, and I'd like to have him address the Court  
19 first if the Court doesn't mind.

20 THE COURT: All right. Very good.

21 Mr. McGee, good afternoon again, sir.

22 THE DEFENDANT: Sir, Dear Honorable Judge Noel  
23 Hillman. I understand that my actions caused us to be here  
24 today.

25 THE COURT: Mr. McGee, can you speak up a little more



1 loudly for me? Because I can hear you, but just barely.

2 Maybe I'll turn my volume up a little. Maybe that's my  
3 problem, maybe I'm part of the problem. Sorry. Go ahead.

4 THE DEFENDANT: Dear Honorable Judge Noel Hillman, I  
5 understand that my actions have caused us to be here today.  
6 I'm very sorry and aware of my efforts in this case. I am  
7 guilty. I knew what I was doing was wrong. I placed the  
8 burden on my uncaused family. I should not have participated  
9 in any of this.

10 The effects of my actions have caused uncertainty in my  
11 household. I recently, two, three years, just moved over here  
12 in search of a better education and schools and area for my  
13 kids. My wife depends on me greatly. All my kids are under  
14 my roof. I have embarrassed my family and friends. My two  
15 eldest daughters recently graduated from college and here I am  
16 in Federal Court about to get sentenced. It is unbearable to  
17 look at my kids' face regarding this topic, and everybody is  
18 still trying to show me sympathy, but it was just stupid, and  
19 I don't know, I'm sorry and I'm just going to -- I don't know.

20 I'm -- I just want to move forward. I have a plan to  
21 pay Synchrony their money back. I should have never got  
22 involved with this. I should have never got involved with  
23 him. I knew what I was doing was wrong. I can't -- I  
24 can't -- I can't lie and say certain people in my life told me  
25 it was a bad idea. You know, it was a bad idea, but I was

1 trying to put my family ahead. It was a stupid -- it was so  
2 stupid. I just, I just wish I would have did things  
3 different.

4 I get out of this, I'm going to trucking school. I do  
5 not want to disappoint my wife, my kids. I won't be back in  
6 nobody's court, and I am going to continue my -- to advocate  
7 against human trafficking. I'm going to keep going with that.  
8 Thank you, your Honor.

9 THE COURT: All right. Mr. McGee, thank you.  
10 Mr. Brownstein.

11 MR. BROWNSTEIN: Well, I think all has been said,  
12 Judge. I don't think Mr. McGee, as I put in my sentencing  
13 memo, I don't think I need to enhance more of what I said in  
14 my sentencing memo, and to me my credibility is very important  
15 before a court. Maybe in my 47-year career of doing this,  
16 I've recommended maybe the number of fingers on my hands, that  
17 someone shouldn't go to jail, ask for a non-custodial  
18 sentence. I don't do that lightly. I don't do that because  
19 to me it's very important that I have credibility with this  
20 Court. This Court has known me probably 25 years when he was  
21 an Assistant U.S. Attorney, and it's very important to me that  
22 what I say is taken as gospel and as true and that I would not  
23 in any way ask for something I don't think is appropriate.

24 I think when, if the Court has departed down to 24  
25 months, it's a discretionary guideline number. I think

1 personally that, and as I said, Mr. McGee should be a  
2 non-custodial sentence. The reasons why I have already  
3 articulated. And he's still doing things to help individuals  
4 in society. His blog is still helping young women, still  
5 helping little girls, still helping society to prevent the  
6 predators and the pedophiles and preying on these young  
7 children, vulnerable children. I think that to stop him and  
8 to prevent him from continuing his assistance in many  
9 different areas and putting him in custody will not accomplish  
10 anything but hurt the good that he's done, the good that he's  
11 continuing to do, and the good it is in helping all these  
12 young women. His daughters help him with the blogs. They  
13 basically try to assist in the pain and helping these young  
14 kids that have been traumatized, and he's continuing to do  
15 that and he does it every day.

16 And again, Judge, if the Court feels that there has to  
17 be some sort of sentence other than a non-custodial, I would  
18 ask for the Court to sentence him to a house arrest. The  
19 Court can sentence him up to a year, 10 months to a year on  
20 house arrest. This way at least he can continue the good  
21 things that he is doing. He will not be separated from his  
22 family.

23 But more importantly, because everybody has that issue,  
24 as though everyone and anyone I represent has that issue,  
25 being separated from their loved ones, that's not the main

1 situation here. What the main situation and what I'm asking,  
2 why I'm asking what I'm asking is because of all the good that  
3 he's doing and all the good that he has done. So, to prevent  
4 that by incarcerating him accomplishes nothing. It's just  
5 another black man going to jail on a non-violent case.

6 And this mass incarceration, it goes on in this  
7 country, the largest in anywhere in the world, and I don't  
8 know if you read Judge Rakoff's book or not, he talks about  
9 that, and it is going to accomplish nothing in putting him in  
10 custody, Judge. And that's why I sincerely mean what I'm  
11 saying, and I wouldn't -- I don't say it lightly. As I said,  
12 I can count on my hands in 47 years that I've requested this,  
13 and I believe what I'm saying is true and necessary and  
14 supportive of the record, and supportive for helping society  
15 and the local people in Las Vegas and elsewhere that he's  
16 assisting. That's all I have to say, Judge.

17 THE COURT: All right. Mr. Brownstein, thank you.

18 All right. Ms. Murphy, do you wish to be heard on  
19 behalf of the United States?

20 MS. MURPHY: Yes, your Honor. First I would just  
21 incorporate my April 29th, 2021 sentencing submission with  
22 respect to the 3553(a) factors.

23 I would just like to note, with respect to the nature  
24 and circumstances and the seriousness of the offense, the  
25 government does obviously treat this very seriously. This

1 crime in this case, you know, involved taking other  
2 individuals, many of whom were inmates, PII, having their  
3 credit inflated, applying for fraudulent credit cards in their  
4 names, and then making fictitious transactions, the proceeds  
5 of which were deposited into bank accounts controlled by Mr.  
6 McGee and his co-conspirators.

7         The government does think it is appropriate, however,  
8 to take into account Mr. McGee's role in this conspiracy. He  
9 was, his primary role was soliciting CareCredit and then  
10 providing that CareCredit to Mr. Arena who was responsible for  
11 submitting most of the fictitious transactions to Synchrony  
12 Bank, and the government does recognize that Mr. Arena played  
13 the largest role in terms of generating losses to Synchrony  
14 Bank and he pocketed the largest amount of the fraudulent  
15 proceeds here.

16         Also, with respect to the inmates, the government does  
17 note that it was Mr. Arena that hired the hacker to obtain the  
18 inmates' identities and it was Mr. Arena that inflated their  
19 credit. Mr. McGee obviously used these inmates' identities to  
20 apply for these cards and profited, but I just bring Mr.  
21 Arena's conduct to the Court's attention so that it may  
22 consider that in light of fashioning an appropriate sentence  
23 for Mr. McGee.

24         I think with respect to the other 3553(a) factors, I  
25 would just rely on my written submission.

1 THE COURT: All right. Ms. Murphy, thank you.

2 Mr. Brownstein, anything further?

3 MR. BROWNSTEIN: No, your Honor.

4 THE COURT: All right. I'm going to take a short  
5 break to consider the thoughtful arguments offered by counsel,  
6 to consult with Probation on the final language. If you will  
7 bear with me for just few minutes, it won't take too long.

8 MR. BROWNSTEIN: Thank you, your Honor.

9 (Recess at 3:47 p.m..)

10 (On the record at 3:51 p.m.)

11 THE COURT: All right. I am now obligated to impose  
12 a sentence that's sufficient but not greater than necessary to  
13 comply with the statutory goals set forth in 18, United States  
14 Code, Section 3553. My sentence should reflect the  
15 seriousness of the offense, should promote respect for the law  
16 and provide just punishment. It should afford adequate  
17 deterrence to criminal conduct, to protect the public from  
18 further crimes of the defendant, and to provide the defendant  
19 with needed educational or vocational training, medical care  
20 or other correctional treatment in the most effective manner.

21 I'm to consider the nature and circumstances of the  
22 offense, and the history and characteristics of the defendant,  
23 the kinds of sentences made available for the count of  
24 conviction, here there are two counts of conviction,  
25 conspiracy to commit bank fraud and bank fraud; the kinds of

1 sentences and sentencing range based on a determination of an  
2 accurate calculation of the sentencing guidelines as well as  
3 the policy statements that accompany them. I'm free to  
4 disregard the sentencing guidelines and the policy statements  
5 in fashioning my overall sentence and specifically to  
6 determine that they may be inapplicable for various reasons.

7 I am to avoid unwarranted sentencing disparity among  
8 defendants with similar records who have been found guilty of  
9 similar conduct. The Court has fraud cases before it, bank  
10 fraud cases before it fairly regularly. I'm mindful of those  
11 overall cases. And in this particular matter there are two  
12 co-defendants who have been sentenced by the Court. Mr. Arena  
13 received a sentence of 48 months after a modest variance. Mr.  
14 Modeliste received a sentence of 36 months after a similar  
15 calculation. I'm mindful of those sentences in light of both  
16 the arguments made by the government and the defense as well  
17 as the departure motion in fashioning this overall sentence.

18 The defense argues that the two points that I  
19 calculated, Probation calculated on the guidelines and  
20 consistent with the plea agreement is particularly harsh given  
21 the relative role of the three defendants in this case, and  
22 we've all noted that it was just barely over the threshold for  
23 the extra two points, \$6,000 or so.

24 It's been described to me that Mr. McGee is contrite  
25 and sorry for his conduct, as reflected in both his

1 cooperation and his decision to plead guilty, and is  
2 consistent with his overall history and characteristics. I've  
3 heard him here today and believe him to be seriously  
4 remorseful and contrite about his criminal behavior.

5       It's been argued in the sentencing memorandum that Mr.  
6 McGee faced a very tough upbringing. That seems to be well  
7 established. In spite of that, he has established himself as  
8 a hard working individual, creative individual, indeed earns  
9 a, currently earns a living and supports his family at least  
10 in part through social media activities, clearly someone who  
11 overcame a difficult background and is capable of achieving  
12 important things.

13       I'm asked to consider that he, through his internet  
14 activities, his social media activities, has engaged in  
15 helping others in society who have suffered various traumas  
16 and been victimized. It appears to me that this is a  
17 substantial effort, that it was not undertaken for purposes of  
18 mitigating his sentence here, but represents a sincere desire  
19 to help others who have suffered such traumas.

20       He is described to me as a family man in his  
21 relationships. He's been supportive of his natural children  
22 and also children that have been under his custody and care.  
23 He has strong family support and community support, as  
24 evidenced in the letters submitted to me.

25       I have to balance this, these what are primarily



1 history and characteristics of the defendant largely  
2 favorable, I should also add that his criminal history  
3 category is I, and while there were some, maybe some  
4 knucklehead things when he was very young, he's basically  
5 lived a law abiding life since that time. I have to balance  
6 all these things against the nature and circumstances of the  
7 offense, and, frankly, this is a very sophisticated, wide  
8 ranging fraud that extended over a period of years, and I view  
9 the inmates and others whose identities were stolen as true  
10 victims in this case. This appears to have been driven by  
11 monetary gain and greed, and through especially Mr. Arena's  
12 knowledge of credit reporting scores and credit repair, a  
13 substantial amount of money was obtained from an insured  
14 institution.

15 Now, that's reflected in the base offense level and the  
16 amount of loss, but the fact of the matter is this is a  
17 serious federal crime and a message should be sent to others  
18 and to these defendants that if you engage in the systematic,  
19 extensive, long ranging theft from an insured federal  
20 institution and you are caught, that you are likely to serve a  
21 substantial sentence, and my sentence will reflect this, the  
22 broad harm caused to the individuals whose credit was stolen  
23 as well as this institution.

24 Now, I should say I credit the government for their  
25 explanation about the relative roles of the individuals. I am

1 not sure I fully appreciated it at Mr. Arena's sentencing, but  
2 I appreciate it now, that really in the order of involvement  
3 or responsibility for this, it's Arena first, McGee second,  
4 and Mr. Modeliste third, to the extent that Mr. McGee  
5 recruited him, and I think that's not a particularly favorable  
6 thing for Mr. McGee in that he recruited another individual to  
7 the conspiracy and directed him with regard to the creation of  
8 these fake bank accounts.

9         So, this was a sophisticated fraud and Mr. McGee was  
10 literally in the middle of it, and I think Mr. McGee needs to  
11 understand that it's a serious crime and he's going to have to  
12 pay a price for that in terms of some period of incarceration.  
13 I understand the defense wants a non-custodial sentence. I  
14 understand that's within my authority and power. But I don't  
15 think it's appropriate given the amount of money stolen, how  
16 long it lasted, the number of people involved, the recruiting  
17 of others, and the broad harm that the scheme caused.

18         Overall, I believe a sentence of 18 months, which would  
19 result from a two-level variance downward in light of Mr.  
20 McGee's positive characteristics, I would depart -- rather,  
21 vary in this matter down from the level 17 that I previously  
22 computed to a level 15 after my consideration of the 3553  
23 factors and impose a sentence of 18 months. I would also  
24 impose -- and those would run, would be on each of the two  
25 counts to run concurrently.

1 I would impose a term of supervised release of five  
2 years. I would impose financial disclosure, new debt  
3 restrictions, and self-employment disclosure while the  
4 restitution amount remains unpaid. I would order full  
5 restitution in the amount of \$1,506,393.76 to be paid to  
6 Synchrony Bank. That, of course, is subject to any funds  
7 received to offset that amount paid by the co-defendants, that  
8 amount representing the amount of the total fraud.

9 I would not waive -- I would waive fine in this case,  
10 rather, because I find that Mr. McGee's financial situation  
11 would not allow him to pay restitution, take care of his  
12 family and also pay a fine. It would be unnecessarily  
13 punitive and perhaps interfere with his reintegration back  
14 into society and support of his family. So, I will waive a  
15 fine in this case. However, it is required under statute that  
16 a total special assessment of \$200 be imposed, and I would  
17 impose that.

18 There is a final order of forfeiture coming my way or  
19 did come my way, Ms. Murphy? I'm sorry, I don't recall that.

20 MS. MURPHY: It has been submitted to the Court, your  
21 Honor. It was sent in yesterday.

22 THE COURT: All right. Any objection to the  
23 forfeiture order as submitted by the United States, Mr.  
24 Brownstein?

25 MR. BROWNSTEIN: No, your Honor.

1 THE COURT: All right. I'll sign that order.

2 Ms. Murphy, do you know of any legal reason why I can't  
3 impose the sentence I have just described?

4 MS. MURPHY: The government is not aware of any legal  
5 reason.

6 THE COURT: Mr. Brownstein?

7 MR. BROWNSTEIN: No legal reason, your Honor.

8 THE COURT: Pursuant to the Sentencing Reform Act of  
9 1984 -- I'm sorry. Mr. McGee, I'm now going to pronounce  
10 sentence.

11 Pursuant to the Sentencing Reform Act of 1984, it is  
12 the judgment of this Court that you, Larry McGee, are hereby  
13 committed to the custody of the Bureau of Prisons to be  
14 imprisoned for a term of 18 months on each of counts 1 and 2  
15 to be served concurrently.

16 Upon release from imprisonment, you will be placed on  
17 supervised release for a term of five years. This term  
18 consists of terms of five years on each of counts 1 and 2, all  
19 such terms to run concurrently.

20 Within 72 hours of release from custody, you must  
21 report in person to the Probation Office in the district to  
22 which you are released.

23 While on supervised release, you must not commit  
24 another federal, state or local crime, must not possess a  
25 firearm or other dangerous device, must not possess an illegal

1 controlled substance, and must comply with the other mandatory  
2 and standard conditions that have been adopted by this Court.  
3 You must submit to one drug test within 15 days of  
4 commencement of supervision and at least two tests thereafter  
5 as determined by the probation officer.

6 I'm going to impose those three special conditions I  
7 indicated. I do so because of the nature and circumstances of  
8 the offense of conviction, the history and characteristics of  
9 the defendant, the need for specific and general deterrence,  
10 the need to protect the public, and to provide needed  
11 correctional treatment to the defendant. I find that these  
12 conditions involve no greater deprivation of liberty than is  
13 reasonably necessary.

14 First, upon request you must provide the U.S. Probation  
15 Office with full disclosure of your financial records,  
16 including commingled income, expenses, assets and liabilities,  
17 to include yearly income tax returns. With the exception of  
18 the financial accounts reported and noted within the  
19 presentence report, you are prohibited from maintaining or  
20 opening any additional individual or joint checking, savings  
21 or other financial accounts for either personal or business  
22 purposes without the knowledge and approval of the U.S.  
23 Probation Office.

24 You must cooperate with the U.S. Probation Office in  
25 the investigation of your financial dealings, and must provide

1 truthful monthly statements of your income. You must  
2 cooperate in the signing of any authorization to release  
3 information forms permitting the U.S. Probation Office access  
4 to your financial records.

5           You are prohibited from incurring any new credit  
6 charges, opening additional lines of credit, or incurring any  
7 new monetary loan, obligation or debt, by whatever name known,  
8 without the approval of the U.S. Probation Office. You must  
9 not encumber or liquidate interest in any assets unless it is  
10 in direct service of the restitution obligation or otherwise  
11 has the express approval of the Court.

12           You must cooperate with the U.S. Probation Office in  
13 the investigation and approval of any position of  
14 self-employment, including any independent, entrepreneurial or  
15 freelance employment or business activity. If approved for  
16 self-employment, you must provide the U.S. Probation Office  
17 with full disclosure of your self-employment or other business  
18 records, including, but not lilted to, all the records  
19 identified in the Probation Form 48F, Request for  
20 self-employment records, or otherwise requested by the U.S.  
21 Probation Office.

22           It is further ordered that you must pay restitution in  
23 the total amount of \$1,506,393.76. Payments should be made  
24 payable to the U.S. Treasury and forwarded to the Clerk of the  
25 Court in Trenton, New Jersey, for distribution to the

1 following victim: Synchrony, Attention: Fraud Restitution,  
2 P.O. Box 105969, Atlanta, Georgia, 30348-5969.

3 The amount ordered represents the total amount due to  
4 the victim for that victim's loss. Your restitution  
5 obligations will not be affected by any restitution payments  
6 made by other defendants in this case, except that no further  
7 payments will be required once payments by one or more of the  
8 defendants, co-defendants fully satisfies the victim's total  
9 loss or this defendant satisfies that loss.

10 The following defendants in the following case may be  
11 subject to restitution orders to the same victims for the same  
12 loss and indeed are: Adam D Arena, Docket Number 19-699, and  
13 Dwayne Modeliste, 19-699 as well.

14 This restitution is due immediately. It's recommended  
15 that you participate in the Bureau of Prisons Inmate Financial  
16 Responsibility program. If you participate in that program,  
17 the restitution will be paid from those funds at a rate  
18 equivalent to \$25 every three months. In the event the entire  
19 restitution is not paid prior to the commencement of  
20 supervision, you must satisfy the amount due in monthly  
21 installments of no less than \$200 to commence 30 days after  
22 release from confinement.

23 You must notify the United States Attorney for this  
24 district within 30 days of any change of mailing or residence  
25 address that occurs while any portion of the restitution

1 remains unpaid.

2 As I indicated, I find that the defendant does not have  
3 the ability to pay a fine. I will, therefore, waive a fine in  
4 this case. It is, however, ordered that Mr. McGee pay to the  
5 United States a total special assessment of \$200, which is due  
6 immediately. That's \$100 on each of the counts, two counts of  
7 conviction.

8 The government has indicated and the defense consents  
9 that an order of forfeiture will be entered and I will sign it  
10 today.

11 I wish to advise you, Mr. McGee, of your right to  
12 appeal your conviction and my sentence as applicable pursuant  
13 to 18, United States Code, Section 3742, subject to any  
14 preexisting appellate waiver that may limit that right. If  
15 you are unable to pay the cost of filing a notice of appeal,  
16 you may request the Clerk of the Court to file a notice of  
17 appeal on your behalf. You have 14 days to do so.

18 All right. Are there any recommendations that you wish  
19 to make, Mr. Brownstein, regarding the service of his  
20 sentence?

21 MR. BROWNSTEIN: Yes. I ask the Court to permit Mr.  
22 McGee to self-surrender. I'd ask the Court to recommend a  
23 camp closest to his home in Las Vegas. And that's it.

24 THE COURT: All right. Ms. Murphy, thoughts on that?

25 MS. MURPHY: The government has no objection to Mr.



1 McGee self-surrendering to a BOP facility.

2 THE COURT: All right. Mr. Brownstein, I'm going to  
3 leave it to the Bureau of Prisons to determine the appropriate  
4 level of institution. In light of the fraud charge and the  
5 amount of the sentence, he may very well go to a camp, but I'm  
6 going to let the Bureau of Prisons follow their guidelines and  
7 determine what they think is best.

8 I will recommend an institution closest to his home  
9 address in light of the support of his family and his stated  
10 obligations to them and hope that that will facilitate a  
11 positive relationship with his family.

12 Mr. McGee, where you serve your sentence is entirely up  
13 to the Bureau of Prisons. I will recommend, however, that you  
14 serve at an appropriate facility in the State of Nevada as  
15 close as possible to your home address.

16 All right. Is there anything else the United States  
17 wishes me to address at this time?

18 MS. MURPHY: Nothing further from the government,  
19 your Honor.

20 THE COURT: All right. Anything else from the  
21 defense?

22 MR. BROWNSTEIN: Are there any counts to be  
23 dismissed?

24 MS. MURPHY: No counts to be dismissed.

25 THE COURT: All right.

1 MR. BROWNSTEIN: Nothing further, Judge.

2 THE COURT: All right. Thank you for that.

3 Mr. McGee, you came from humble beginnings and have  
4 worked very hard, pursued some education, perhaps you will  
5 pursue some more. You strike me as an intelligent man who has  
6 a great amount of potential, and you've demonstrated that over  
7 the last couple of years. You did the right thing in this  
8 case and you're trying to do the right thing in your  
9 community. I think you have a bright future. Nothing in my  
10 sentence is designed to discourage you from achieving great  
11 things. It's meant to convey to you the seriousness of what  
12 you did. I think that's something that's not lost on you.  
13 I've tried to balance the good person that you are and the  
14 things you've tried to do and the cooperation you provided to  
15 the United States. I wish you good luck in the future.

16 All right. If there's nothing else from the parties,  
17 this matter is concluded. I wish you all a good rest of the  
18 day.

19 MS. MURPHY: Thank you.

20 (Proceedings concluded at 4:09 p.m..)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/S/ Robert T. Tate, CCR, CRR

Dated: May 10, 2021

Signature of Court Reporter